

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**IN RE:**

**SHARPE CONTRACTORS, LLC,**

**Debtor.**

**CHAPTER 11**

**CASE NO. 20-72638**

**Contested Matter**

**Sharpe Contractors, LLC,**

**Movant,**

**vs**

**Bank of America, N.A., Selective Insurance  
Company of America, American Funding  
Services, Inc., Alfa Advance Funding, LLC,  
and 24 Capital, LLC,**

**Respondents.**

**SUPPLEMENT TO EMERGENCY MOTION FOR  
ENTRY OF AN INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL**

COMES NOW, Sharpe Contractors, LLC (the “Debtor”), pursuant to Section 363 of Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 363 (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and files this Supplement to Emergency Motion for Entry of an Interim Order Authorizing Use of Cash Collateral (“Motion”). In support of the Motion, the Debtor shows the Court as follows:

**Debtor’s Background**

1. Sharpe Contractors, LLC is a commercial construction company formed in April of 2011 by Shane Sharpe, its sole member. Debtor achieved a great level of success working on retail and petroleum projects from 2013-2017. Debtor entered the hospitality construction market in 2016 and has worked on multiple hospitality construction projects over the past 4 years.

2. In the late spring of 2018, Debtor entered into a contract with Dixon Management to build a Holiday Inn Express in Brunswick Ga. The project was going smoothly and was approximately 80% complete when the electrical contractor (Henry County Electric, Chris A. Hale, LLC, Case No. 19-67877, N.D. Ga.) filed for Chapter 11 bankruptcy. After bringing an expert in to evaluate the work that had been performed by Henry County Electric, it was determined that the majority of the work was not adequate and presented numerous safety issues. Debtor hired a new electrical contractor to repair a large majority of this work, resulting in an additional \$550,000 of expenses. In addition to this, much of the sheetrock, paint, wallcovering and millwork had to be removed and repaired during this process, resulting in an additional \$400,000.00 of cost overruns. Further complicating the Debtor's difficult position, Henry County Electric failed to pay its various sub-subcontractors and vendors, resulting in an additional \$600,000.00 in expenses. At this time, the surety, Selective, was requested to get involved in order to satisfy these substantial losses and issue bonds for all outstanding liens. These losses, along with 8 months of additional delays on the project, resulted in a net loss of over \$2 million.

3. The Henry County Electric Project was the catalyst for Debtor's future financial troubles. In the late Spring of 2019, Sharpe entered into a contract with AVR Atlanta Hotel, LLC and AVR Hotel NW Tenant, LLC to build a Ballroom and new SpringHill hotel at AVR's current Marriott property located in Marietta, Georgia. At the beginning of the project, Debtor began site work and ran into a 4 month delay due to encountering substantial rock while excavating the foundation for the SpringHill Project. While hitting rock is very common in Georgia, this particular event produced a \$550,000 cost overrun as the owner contended that the rock was in the contract and was identified in the geo-tach report. Additionally, on October 24, 2019, a 10" water-main burst on site, resulting in millions of gallons of water entering the existing Marriott. The water

penetrated all existing elevators, boilers, and numerous guest rooms on the first floor shutting the 400 room hotel completely down while emergency repair crews were brought in to repair these essential services.

4. After the “Water Main” event, Debtor has continued construction activities on both projects (Ballroom and SpringHill). Debtor has had some success on these two projects. But Debtor has also faced considerable financial challenges as a result of the unforeseen cost overruns.

5. In October of 2019, Debtor had exhausted the entire \$750,000.00 line of credit with Bank of America and made the unfortunate decision to take on additional capital with several merchant cash advance companies (“MCA’s”). Debtor was in discussions with two new hotel projects, (Hilton Garden Inn in Lexington, Kentucky and Hilton Garden Inn in Pensacola, Florida) in early 2020 when the Covid-19 began affecting business operations across the country. The pandemic caused the immediate suspension of both projects. New hospitality construction was greatly affected. Debtor satisfied these initial MCA’s (approximately \$925,000.00 of repaid funds) and in late summer of 2020 once again took on additional capital from three MCA’s: Alfa Advance Funding, 24 Capital, and American Funding Source. The combination of punishing daily repayment requirements by the MCA’s and cost overruns on the aforementioned jobs placed Debtor into the position it is today.

### **Additional Facts and Relief Requested**

#### **The Northlake Project**

6. Debtor is currently working on three construction projects. On the “Northlake” project, Debtor is managing the construction of a Hilton in Tucker, Georgia for Anand, Inc. (the “Owner”). The Northlake project is bonded by surety Selective Insurance Company of America (“Selective”), a secured creditor in this case and purported second priority lienholder on proceeds

from two other projects managed by Debtor. Selective asserts that its lien on any proceeds from the Northlake project is in first priority as the surety of the project.

7. The current payment arrangement on the Northlake project calls for the Owner to pay Selective for the amounts owed to the subcontractors and vendors. Selective then pays the subcontractors and vendors. The funds paid from the Owner to Selective and then to the subcontractors and vendors is not cash collateral because it never comes under the control of the Debtor.

### **The AVR Projects**

8. The Debtor is working on two other projects for related companies AVR Atlanta Hotel, LLC and AVR Hotel NW Tenant, LLC (together, “AVR”). These two projects are the Marriott Ballroom Project and the Springhill Project (together, the “AVR Projects”). AVR pays Debtor a general contractor’s fee to manage the project and be responsible for overseeing the work of subcontractors and vendors.

9. The monthly invoices provided to AVR are broken down into two categories: subcontractors/vendors and the fees paid to Debtor for its services as construction manager. AVR pays the subcontractors via a “two-party” check system in which AVR makes the check payable to both the subcontractor/vendor and the Debtor pursuant to section 9.5 of its contract with the Debtor. Debtor determines that the invoice from the subcontractor/vendor is in the appropriate amount and endorses the check to the subcontractor/vendor.

### **Two-Party Check System**

10. Attached to this Supplement is the list of subcontractors and vendors that must be paid on the AVR Projects in the next 10 days. *See* Exhibit “B”. Debtor’s contention is that the money being paid is not cash collateral of any lender in that the funds are paid jointly to Debtor

and the subcontractor and are earmarked for specific payment to the subcontractor owed. However, out of an abundance of caution, Debtor brings this Supplement to request court authority to continue to receive checks pursuant to the “two-party” check system that has been implemented by AVR and Debtor and pay the subcontractors and vendors the appropriate amounts.

11. The total amount due to subcontractors and vendors on the Springhill Project is \$160,968.81. Debtor requests court authority to accept a joint check from AVR for each subcontractor and vendor requested to be paid and endorse the check to the appropriate party.

12. The total amount due to subcontractors and vendors on the Marriott Ballroom Project is \$59,645.12. Debtor requests court authority to accept a joint check from AVR for each subcontractor and vendor requested to be paid and endorse the check to the appropriate party.

13. AVR, as the property owner, is currently in possession of any funds owed to the various subcontractors and vendors. If Debtor does not endorse the joint check to the appropriate subcontractor and vendor, Georgia law permits the imposition of a mechanics lien on AVR’s real property. O.C.G.A. § 44-14-361. AVR would then be forced to pay the subcontractors and can, under its contract with Debtor, seek indemnification by setoff against other sums owed to the Debtor. Section 553 preserves setoff rights in bankruptcy, and the Code treats setoffs as secured claims. See 11 U.S.C. § 506(a). As such, any payment to subcontractors and vendors pursuant to the attached pay requests does not harm any creditor holding a security interest in cash collateral. In fact, under Section 9.5 (General Conditions of the Contract for Construction) of the construction contracts between the parties attached hereto as Exhibit “C”, AVR may refuse payment if its subcontractors and vendors are not paid. Debtor therefore requests authority to pay the various subcontractors and vendors through this joint check arrangement without having to modify the

terms of its AVR project contracts to allow for direct payment by AVR to the subcontractors and vendors.

**Debtor's Existing Cash and Accounts Receivable**

14. As of the Petition Date, Debtor is aware of the following items that constitute cash or cash equivalents.

<b>Regions Checking Account</b>	<b>\$23,877.62 (Account frozen by judgment creditor Century Fire Protection, LLC. Counsel for Century promptly filed a release of the garnishment after notice of filing. Debtor is not aware of a DACA agreement that would cover these funds.</b>
<b>Bank of America Checking Account</b>	<b>Approximately \$17,604.15 paid into the registry of the appropriate county court.</b>
<b>Accounts Receivable<sup>1</sup></b>	<b>\$60,740.00 (Northlake and AVR Projects representing Debtor's management fees) \$15,000.00 (Check from Gwinnett County that Debtor will deposit into DIP account). Marriott Ballroom Subcontractor Funds (\$59,645.12)</b>

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<sup>1</sup> Debtor asserts that the amounts owed to subcontractors are not cash collateral of any lender.

	<b>Springhill Project Subcontractor Funds</b> <b>(\$160,968.81)</b>
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### **Lien Priority**

15. From a review of the UCC-records, Bank of America appears to hold a first-priority lien on Debtor's cash collateral. BOA's UCC-1 Financing Statement was filed March 3, 2017, which predates any other lender's security interest. Selective Insurance Company of America filed its own UCC-1 Financing Statement on September 5, 2019, which Selective asserts puts them in second position on the AVR Projects.

16. Debtor believes that BOA is owed approximately \$750,000.00 and that Selective is owed over \$1,000,000.00. Debtor does not have more than \$750,000.00 of cash collateral as of the Petition Date; therefore, any creditor behind BOA in priority is unsecured and has no interest in Debtor's cash collateral.

### **Amended Budget**

Debtor hereby amends its requested budget pursuant to Exhibit "A".

**WHEREFORE**, the Debtor requests that this Court enter an order granting interim use of cash collateral consistent with this Supplemental filing; and grant the Debtor such other and further relief as is just and proper.

Dated: December 16, 2020

/s/ Will B. Geer

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**Exhibit “A” Budget – December 15 through January 15, 2021.**

Income	\$75,000.00
Aetna	\$2,607.30
Certipay (Payroll Company)	\$219.50
Crystal Springs	\$44.74
Brock Insurance - Gen. Liability	\$2,500.00
FCCI- Workers Comp	\$3,254.00
Foundation Software	\$588.50
Gio Ferrari Salary - Dec.	\$9,041.54
Google Cloud	\$144.20
Jeff Romine Salary	\$8,424.66
Jeff Hotel - Salary	\$2,240.40
Dan Foreman Salary	\$8,320.00
Jessica (Administrator) Salary	\$4,615.40
Jobsite Temp Power	\$605.73
Jordan Romeo Salary	\$3,249.22
Microsoft	\$109.50
Office Cleaning	\$130.00
Office Power	\$206.10
Retirement Plan Admin	\$850.00
Shane Sharpe Salary	\$19,230.76
Rent	\$4,543.29
Spectrum	\$435.59
Transamerica Retirement	\$125.00



Misc. Materials	\$1,000.00
Total	\$72,485.33

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>IN RE:</b>	)	
<b>SHARPE CONTRACTORS, LLC,</b>	)	
	)	Case No. 20-72638
	)	
Debtor	)	Chapter 11
_____	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the Supplement to Emergency Motion for Entry of an Interim Order Authorizing Use of Cash Collateral on the parties listed below via overnight delivery, electronic mail, or facsimile transmission:

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Dated: December 16, 2020

/s/ Will Geer  
Georgia Bar Number 940493